

MONTANA LEGISLATIVE HISTORY

Chapter 322 19 79

Bill H 618 S _____

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 2/13 ☒ c

+ EXEC ACTION _____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) ~~2/13~~ 3/7 ☒ c

+ EXEC ACTION _____ c

_____ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

CHAPTER NO. 822.

HOUSE BILL NO. 618

INTRODUCED BY KEEDY, RAMIREZ, SIVERTSEN, CONROY, KROPP,
MARKS, MOORE, SEIFERT, IVERSON, DASSINGER, MANUEL,
DOZIER, JOHNSTON, KEYSER, ANDERSON, JENSEN, ROTH,
WYRICK, NATHE, ERNST, SCHULTZ, SPILKER, HURWITZ, UNDERDAL,
ELLISON, VINGER, FEDA, HEMSTAD, MEYER, GOULD, PISTORIA,
DAY, CURTISS, BURNETT, PORTER, DONALDSON, HAYNE,
C. SMITH, KVAALEN, FABREGA, PAVLOVICH, TEAGUE, O'CONNELL

IN THE HOUSE

February 7, 1979	Introduced and referred to Committee on Judiciary.
February 13, 1979	Committee recommend bill do pass as amended. Report adopted.
February 15, 1979	Printed and placed on members' desks.
February 16, 1979	Second reading, do pass.
February 17, 1979	Considered correctly engrossed.
February 19, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 20, 1979	Introduced and referred to Committee on Judiciary.
March 8, 1979	Committee recommend bill be not concurred in. Report adopted. On motion, Senate reconsider its action taken on adverse committee report and order placed on second reading. Motion adopted.

IN THE HOUSE

March 9, 1979	Returned from second house. Not concurred in.
March 10, 1979	On motion, request of Senate granted for return of H. B. No. 618 for further con- sideration.

IN THE SENATE

March 12, 1979	Returned from second house.
March 13, 1979	Second reading, concurred in.
March 16, 1979	Third reading, concurred in.

IN THE HOUSE

March 17, 1979	Returned from second house. Concurred in. Sent to enrolling. Reported correctly enrolled.
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1 *House* BILL NO. *618* *More defat*
 2 INTRODUCED BY *Keedy, Kammer, Angsten, Conroy*
 3 *Quisinger, Manuel, Dozier, John, By, Anderson*
 4 *Jason, Roth, Wyrick, NATHA, Ehrlich, Schulte, Gaultier*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO RAISE THE MANDATORY *Minimum*
 6 MINIMUM SENTENCE FOR DELIBERATE HOMICIDE FROM 2 YEARS TO 10 *Years*
 7 YEARS; ESTABLISHING A MANDATORY MINIMUM SENTENCE OF 2 YEARS *for*
 8 FOR NEGLIGENT HOMICIDE AND FOR AIDING OR SOLICITING SUICIDE; *for*
 9 RESTRICTING DEFERMENT OR SUSPENSION OF THE MANDATORY MINIMUM *for*
 10 SENTENCES ESTABLISHED IN THIS ACT; AMENDING SECTIONS *for*
 11 45-5-102, 45-5-104, 45-5-105, 46-18-201, AND 46-18-222, *for*
 12 MCA." *Tague, O'Connell*

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 45-5-102, MCA, is amended to read:

15 "45-5-102. Deliberate homicide. (1) Except as provided
 16 in 45-5-103(1), criminal homicide constitutes deliberate
 17 homicide if:

18 (a) it is committed purposely or knowingly; or

19 (b) it is committed while the offender is engaged in
 20 or is an accomplice in the commission of, an attempt to
 21 commit, or flight after committing or attempting to commit
 22 robbery, sexual intercourse without consent, arson,
 23 burglary, kidnapping, felonious escape, or any other felony
 24 which involves the use or threat of physical force or
 25 violence against any individual.

1 (2) A person convicted of the offense of deliberate
 2 homicide shall be punished by death or life imprisonment as
 3 provided in 46-18-301 through 46-18-310 or by imprisonment
 4 in the state prison for a term of not less than 2 10 years
 5 or more than 100 years, except as provided in 46-18-222."

6 Section 2. Section 45-5-104, MCA, is amended to read:
 7 "45-5-104. Negligent homicide. (1) Criminal homicide
 8 constitutes negligent homicide when it is committed
 9 negligently.

10 (2) A person convicted of negligent homicide shall be
 11 imprisoned in the state prison for ~~any term not to exceed a~~
 12 term of not less than 2 years or more than 10 years, except
 13 as provided in 46-18-222."

14 Section 3. Section 45-5-105, MCA, is amended to read:
 15 "45-5-105. Aiding or soliciting suicide. (1) A person
 16 who purposely aids or solicits another to commit suicide,
 17 but such suicide does not occur, commits the offense of
 18 aiding or soliciting suicide.

19 (2) A person convicted of the offense of aiding or
 20 soliciting a suicide shall be imprisoned in the state prison
 21 for ~~any term not to exceed a term of not less than 2 years~~
 22 or more than 10 years, except as provided in 46-18-222."

23 Section 4. Section 46-18-201, MCA, is amended to read:

24 "46-18-201. Sentences that may be imposed. (1)
 25 Whenever a person has been found guilty of an offense upon a

1 verdict or a plea of guilty, the court may:

2 (a) defer imposition of sentence, excepting sentences
3 for driving under the influence of alcohol or drugs, for a
4 period not exceeding 1 year for any misdemeanor or for a
5 period not exceeding 3 years for any felony. The sentencing
6 judge may impose upon the defendant any reasonable
7 restrictions or conditions during the period of the deferred
8 imposition. Such reasonable restrictions or conditions may
9 include:

10 (i) jail base release;

11 (ii) jail time not exceeding 90 days;

12 (iii) conditions for probation;

13 (iv) restitution;

14 (v) any other reasonable conditions considered
15 necessary for rehabilitation or for the protection of
16 society; or

17 (vi) any combination of the above.

18 (b) suspend execution of sentence up to the maximum
19 sentence allowed for the particular offense. The sentencing
20 judge may impose on the defendant any reasonable
21 restrictions during the period of suspended sentence. Such
22 reasonable restrictions may include:

23 (i) jail base release;

24 (ii) jail time not exceeding 90 days;

25 (iii) conditions for probation;

1 (iv) restitution;

2 (v) any other reasonable conditions considered
3 necessary for rehabilitation or for the protection of
4 society;

5 (vi) any combination of the above.

6 (c) impose a fine as provided by law for the offense;

7 (d) commit the defendant to a correctional institution
8 with or without a fine as provided by law for the offense;

9 (e) impose any combination of subsections (1)(b),
10 (1)(c), and (1)(d).

11 (2) If any restrictions or conditions imposed under
12 subsection (1)(a) or (1)(b) are violated, any elapsed time,
13 except jail time, shall not be a credit against the sentence
14 unless the court orders otherwise.

15 (3) Except as provided in 46-18-222, the imposition or
16 execution of the first 2 years of a sentence of imprisonment
17 imposed under the following sections may not be deferred or
18 suspended: 45-5-102(2), 45-5-103(2), ~~45-5-104(2)~~
19 ~~45-5-105(2)~~, 45-5-202(2), 45-5-302(2), 45-5-303(2),
20 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2), 45-9-102(3),
21 and 45-9-103(2).

22 (4) Except as provided in 46-18-222, the imposition or
23 execution of the first 10 years of a sentence of
24 imprisonment imposed under 45-5-102(2) may not be deferred
25 or suspended."

1 Section 5. Section 46-18-222, MCA, is amended to read:

2 "46-18-222. Exceptions to mandatory minimum sentences
3 and restrictions on deferred imposition and suspended
4 execution of sentence. All mandatory minimum sentences
5 prescribed by the laws of this state and the restrictions on
6 deferred imposition and suspended execution of sentence
7 prescribed by subsections (3) and (4) of 46-18-201(3),
8 46-18-221(3), and 46-18-502(2) do not apply if:

9 (1) the defendant was less than 18 years of age at the
10 time of the commission of the offense for which he is to be
11 sentenced;

12 (2) the defendant's mental capacity, at the time of
13 the commission of the offense for which he is to be
14 sentenced, was significantly impaired, although not so
15 impaired as to constitute a defense to the prosecution;

16 (3) the defendant, at the time of the commission of
17 the offense for which he is to be sentenced, was acting
18 under unusual and substantial duress, although not such
19 duress as would constitute a defense to the prosecution;

20 (4) the defendant was an accomplice, the conduct
21 constituting the offense was principally the conduct of
22 another, and the defendant's participation was relatively
23 minor; or

24 (5) where applicable, no serious bodily injury was
25 inflicted on the victim."

1 Section 6. Saving clause. This act applies only to
2 offenses committed after the effective date of this act.

-End-

HB 618

STATE LAW LIBRARY

AUG 10 1979

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

OF MONTANA

46th Legislative Session
January 3, 1979 to April 20, 1979

ROBERT L. ANDERSON

THOMAS R. CONROY

AUBYN CURTISS

FRED DAILY

WILLIAM DAY

RALPH EUDAILY

POLLY HOLMES

DENNIS IVERSON

MICHAEL KEEDY

DANIEL KEMMIS

KERRY KEYSER

EARL LORY

ROBERT PAVLOVICH

JONAS ROSENTHAL

AUDREY ROTH

CARL SEIFERT

JACK UHDE

WES TEAGUE, Vice-chairman

JOHN P. SCULLY, Chairman

MARY ELLEN CONNELLY, Secretary

LARRY WEINBERG, Staff Attorney

Judiciary COMMITTEE

46th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 618	raise mandatory minimum sentence for deliberate homicide	2/7	Keedy	2/13	pass-amend	2/13
HB 620	revise procedure for preaudit of liquidated claims	2/7	Lory	2/13	pass	2/13
HB 621	require SRS - statistics on domestic violence, etc.	2/7	Waldron	2/16	pass	2/16
SB 104	SRS rulemaking authority	2/7	S. Brown	2/13	concurr	3/5
SB 152	revise procedure - hearing youthful offender - violated aftercare agreement	2/7	Thomas	2/13	concurr amend	3/5
SB 164	require agencies to recodify administrative rules	2/7	Peterson	2/13	concurr	3/5

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
February 13, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building on Tuesday. All members were present except Representatives Conroy, Seifert and Uhde.

Scheduled for hearing were the following bills: House Bills 618 and 620 and Senate Bills 104, 152, and 164.

HOUSE BILL NO. 618:

Representative Keedy as chief sponsor of the bill explained the difference between negligent homicide and deliberate homicide. This bill would raise the mandatory minimum sentence for deliberate homicide from 2 years to 10 years and the mandatory minimum sentence of 2 years for negligent homicide and for aiding or soliciting suicide. He went through the bill briefly and explained other provisions. Representative Rosenthal asked what is the minimum sentence now for deliberate homicide. This was discussed at length and Representative Holmes questioned the wisdom of having suicide and euthanasia included

Representative Keedy agreed that he did not think these should be treated as a crime. There was no further discussion and the hearing closed on House Bill 618, after a series of questions and answers.

SENATE BILL NO. 104:

Senator Steve Brown commented that an agency must have express rulemaking authority under Title 53. The bill was entirely rewritten in the Senate. We should define section by section their explicit rulemaking authority. In Section 3 in the Statement of Intent it lists the rulemaking authority. On page 3, lines 4 and 5 have a substantive change. Section 2 deals with the general relief of the department. Senator Turnage raised the question whether SRS could modify the laws, and the answer is no. He explained the bill further.

Representative Roth asked if the rules would be permanent and hard and fast. The Senator said, they may change depending upon the amount of money from the legislature or from the federal government and the program requirements at the federal level. He elaborated on this a little further.

Representative Eudaily asked about page 3, part 22, does this help support the problem of the nursing homes. There was discussion about this and it was agreed they would be covered elsewhere.

With no further discussion or question the hearing closed on Senate Bill 104.

10, line 10 by changing the 5 to 3 and the 10 to 5. The motion carried with the vote unanimous. Representative Lory moved to amend on page 9, line 16 that the attempt to evade be put back to a misdemeanor and the evasion of taxes a felony. This motion carried with the vote unanimous.

Representative Keyser moved these recommendations be adopted and presented to the Taxation Committee as they had requested. This bill was referred to Taxation from the Judiciary Committee. The motion carried with the vote unanimous. (copy of recommendations attached)

HOUSE BILL NO. 618:

Representative Keedy moved "do pass". Representative Holmes moved to amend the title and page 2, line 21 by reinserting original wording. The motion carried with Representatives Keedy, Teague and Iverson voting "no".

Representative Daily moved to amend page 2, line 10 by striking the new language and inserting the original language. He spoke to his motion. The motion carried with Representatives Keedy,, Keyser and Eudaily voting "no".

Representative Uhde moved to amend page 4, line 18, to strike the section numbers, since they would no longer apply. The motion carried with the vote unanimous.

Representative Keyser moved "do not pass as amended". The motion failed.

Representative Day moved "do pass as amended". The motion carried with Representatives Keyser, Holmes, Eudaily and Lory voting "no".

HOUSE BILL NO. 620:

Representative Lory moved "do pass". The motion carried with the vote unanimous.

HOUSE BILL NO. 560:

Representative Scully appointed a sub-committee to study the bill and the amendments presented by the sponsor and plug them in. The following members were appointed: Representative Kemmis, Chairman; Representatives Keedy, Uhde Lory and Keyser.

HOUSE BILL NO. 355:

There was discussion as to whether it should be revived. A committee bill is being drafted that will include the intent of this bill. Mr. Scully

Forty-Sixth LEGISLATIVE SESSION

COMMITTEE ON Nedieary - Senate

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS <u>DATE</u>	DO NOT PASS <u>DATE</u>	DO PASS AS AMEND. <u>DATE</u>	BE CON- CURRED IN <u>DATE</u>	BE CONC. IN AS AMENDED <u>DATE</u>	BE NOT CON- CURRED IN <u>DATE</u>
HB 666	2/19/79	3/8/79	3/8/79				3/8/79		
HB 668	2/19/79	3/8/79	3/8/79				3/8/79		
HB 500	2/20/79	3/3/79	3/5/79					3/3/79	
HB 618	2/20/79	3/7/79	3/7/79						3/7/79
HB 621	2/20/79	3/12/79	3/12/79					3/19/79	
HB 673	2/20/79	3/8/79	3/8/79				3/8/79		
HB 692	2/20/79	3/9/79	3/9/79					3/9/79	
HB 699	2/20/79	3/10/79	3/10/79					3/10/79	
HB 712	2/20/79	3/10/79	3/14/79					3/14/79	
HB 678	2/21/79	3/8/79	3/8/79					3/8/79	
HB 705	2/22/79	3/9/79	3/9/79				3/9/79		
HB 717	2/22/79	3/12/79	3/13/79						3/13/79
HB 737	2/22/79	3/12/79	3/14/79					3/14/79	
HB 813	2/22/79	3/14/79	3/20/79					3/19/79	
HB 401	2/23/79	3/5/79	3/5/79						3/5/79
HB 487	2/23/79	3/5/79	3/12/79					3/10/79	

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 7, 1979

The fifty-third meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in room 331 of the capitol building on the above date at 9:31 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 608:

This is an act to provide increased penalties for criminal sale of dangerous drugs in certain circumstances, etc. Representative Gould stated that this was the result of two years culmination of work and talk. He stated they came up with ten years for a second offense and a minimum of twenty years for a third conviction of the criminal sale of drugs and if it is sold to a minor, there is no provision for parole. He stated that if they are convicted the first time, they may have made a mistake, but they must be involved in some type of rehabilitation program, drug-cure program or alcoholic-cure program. He stated the second time they are convicted, it is felt that they are making a business of it and should not be allowed to continue in that business.

Dale Dye, president of the Montana Sheriff's and Peace Officer's Association, stated that in 1978, 41 adults were arrested in his county; in 1976, there were 68 arrests; in 1977 there were 23 arrests and in 1978 there were 41 arrests. He said that of these people arrested, 13 were adult male, 2 were arrested on two charges, 10 were arrested for drug sales, there were 3 felony possession and one for cultivation. He stated that they have never sent a drug offender to the state penitentiary - there have been sales of cocaine and opiates and he stated he yet has to see anyone 'cool their heels' in the pen.

John Bell, representing the Montana Sheriff's and Peace Officer's Association, stated that he hardily agrees with this. He stated that the mandatory penalty is still a little on the high side, but he still was in agreement with this.

There were no further proponents and no opponents.

jail on first or second convictions. He stated that they do not want to put anybody in jail, if they know they have a severe alcoholic problem, they want to be able to say that they can get a \$500.00 fine and go to jail for thirty days or suspend the sentence if they will go into some kind of an alcoholic program.

Jim Jensen, representing the Montana Magistrates' Association, stated that second time offenders often do not understand the severity of a second time conviction and this would give them some leverage.

There were no further proponents and no opponents.

Senator Van Valkenburg questioned if there was authority in another section for cities to adopt this as municipal ordinance. Mr. Jensen stated that a judge in Missoula seemed to understand that there was.

Senator Lensink stated that people who get caught in a dwi need treatment and wondered if Representative Gould had any comments. Representative Gould stated that he thought this has to be up to the discretion of the justice of the peace, he should talk with the person and hopefully the family and see if he has any problems.

There were no further questions or comments and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 618:

This is an act to raise the mandatory minimum sentence for deliberate homicide from two years to ten years, restricting deferment or suspension of the mandatory minimum sentences, established in this act, etc. Representative Keedy gave a brief explanation of this bill. He stated that it is quite possible to be sentenced for ten years in prison and serve less than two years time.

There were no further proponents and no opponents.

Senator Van Valkenburg asked him if he was familiar with any particular case where a sentence was like this and Representative Keedy said no.

There were no further questions and comments and the hearing on this bill was closed.

Minutes - March 7, 1979
Senate Judiciary Committee
Page Seven

Senator Turnage moved that the bill be concurred in, as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 608:

Representative O'Hara moved that this bill be concurred in.

Senator Van Valkenburg questioned if we really need to go as high as ten or twenty on this thing and he stated that the present law is two to life and he thought that five to ten would be more appropriate particularly when you consider Keedy's bill which says ten years for homicide. He also stated that good time does not amount to as much as people say it does. He said with all the good time you can earn, you can get out in one-fifth the amount of time compared to one-fourth the amount of time. He stated that there were some positive things you could do such as giving blood.

Senator Van Valkenburg made a substitute motion to amend the bill on page 2, line 10 by striking "10" and insert "5" and strike "20" and insert "10". The motion carried with Senators Galt and O'Hara voting no.

Senator Turnage moved that this bill be concurred in, as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL ⁶¹⁸~~611~~:

Senator Turnage moved that the bill be concurred in.

Senator Van Valkenburg stated that this is really an example of unneeded legislation and is something that is really a "get reelected" bill and he stated that there is no demonstrated need for this type of legislation, that there has not been a single instance where a judge has sentenced anyone to less than ten years.

Senator Galt questioned if he could say that there was no judge that had sentenced them for less than ten years. Senator Van Valkenburg said that he could not but he did think that they should offer some demonstration that there is a need for this and the least sentence he knew of was 25 years with 15 suspended.

Senator Olson questioned why they do that and Senator Van Valkenburg stated that he thought that they wanted to keep them under the supervision of the parole board. Senator O'Hara stated that there has been a number who were convicted of homicide and who have been out of prison in less than ten years. Senator Van Valkenburg stated yes, there probably are some. Senator O'Hara said that one in Shelby was out in seven years and he stated that a lot of people want these people in prison longer.

Senator Olson questioned if a man gets sentenced for life, what is the earliest he can get out if he is a model prisoner and Senator Van Valkenburg said that he thought it was eighteen years. Senator Brown stated that they raised it to seventeen and a half the last session.

Senator Lensink stated that there is the parole board and somebody makes a rational decision to do it. Senator Van Valkenburg stated that the parole board is judging the individual seven years down the line and at the time the crime is committed and this is suppose to make some changes in their lives.

A vote was taken on the motion to be concurred in and there were five no votes and four yes.

DISPOSITION OF HOUSE BILL 638:

Senator Turnage moved that this bill be not concurred in.

Senator Brown stated that he would like to amend it. He made a substitute motion to amend on page 2, line 10, by striking "department of" and the remainder of lines 11 through 13 and insert "legislative audit committee". The motion carried unanimously.

Senator Turnage stated that he thought this was a very unnecessary piece of legislation, it just creates another study group and another team to investigate the prison and make a report. He said that some disgruntled prisoner or prison guard wanted to change the world by blowing the whistle and if it took fifteen minutes to change a bandaid, it would be in federal court.

BILLS TO BE HEARD BY SENATE JUDICIARY, WEDNESDAY, MARCH 7, 1979

1.) HB 603 (Sivertsen)

Current law: 46-15-302 allows discovery in criminal cases. ~~Discovery in criminal cases.~~ Discovery is a remedy that allows a party to cause the adverse party to answer its allegations and interrogatories thereby disclosing facts or to produce documents or other things within its control. The statute allows either party to demand production of books, statements, papers or objects from any person other than the defendant. Specifically, the statute allows the defendant to require production from the prosecution.

Proposed bill: would exempt law enforcement officials' ^{investigative} reports and internal reports and other work product of the prosecution from discovery by the defendant.

2.) HB 608 (Gould)

Current law: 45-9-101 makes it a felony to criminally sell a dangerous drug. The sentence for such offense is imprisonment for 1 year to life or 2 to life for sale of an opiate.

Proposed bill: Amends 45-9-101 to increase the penalties for the offense. A second conviction would get 10 years to life. A third conviction would get 20 years to life. If sale is to a minor, the defendant will be ineligible for parole or furlough. Also, the bill amends 46-18-222 to include the new penalties in the provision that requires that the first 2 years of certain sentences can not be deferred or suspended.

HB 611 (Gould)

Current law: The penalty for a second conviction for driving while intoxicated is imprisonment for up to 90 days plus a possible fine of \$300-\$500. *see corrected summary attached*

Proposed bill: Would make the penalty for a second conviction for driving while intoxicated a fine of \$300 - \$500 and possible imprisonment for up to 30 days.

HB 618 (Keedy)

Current law: The penalty for deliberate homicide is a minimum of 2 years imprisonment up to 100 years. Negligent homicide and aiding or soliciting suicide get up to 10 years imprisonment with no minimum sentence.

Proposed bill: Amends 45-5-102 to raise the mandatory minimum

sentence for deliberate homicide from 2 years to 10 years. And amends 46-18-201 to provide that the first 10 years of such sentence rather than the first 2 years may not be deferred or suspended except as provided in 46-18-222 dealing with exceptions to mandatory minimum sentences (including minors, incompetents, people under duress, etc.) As originally drafted, this bill would have established a mandatory minimum sentence of 2 years for negligent homicide and for aiding or soliciting suicide, this provision was deleted by the House.

5.) HB 638 (Azzara)

Proposed bill: Creates a medical team to investigate medical practices in the state prison.

Section 1. NEW.
Section 2. NEW.

Definition.

Prison medical practices investigative team -- appointment and composition.

The team is to be composed of a physician, registered nurse, psychologist, pharmacist, dentist, and a criminologist to be appointed by the speaker and minority leader of the Senate ~~House~~ ^{and president & minority leader of the Senate}. The team is to be allocated to the Department of Administration for administrative purposes only.

Section 3. NEW. Compensation and expenses.
\$25 a day plus expenses for days actually spend on duty.

Section 4. NEW. Powers and duties.
The team is to investigate medical practices in the state prison and make recommendations to the Department of Institutions and report to the 47th Legislature. The team is authorized to seek funds for its continuation beyond June 30, 1981.

Section 5. NEW. Termination of team.
Team will terminate June 30, 1981, unless the legislature provides otherwise.

Section 6. NEW. Immediate effective date.

ROLL CALL

JUDICIARY

COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT
Lensink, Everett R., Chr. (R)	✓	
Olson, S. A., V. Chr. (R)	✓	
Turnage, Joan A. (R)	✓	
O'Hara, Jesse A. (R)	✓	
Anderson, Mike (R)	✓	
Galt, Jack E. (R)	✓	
Towe, Thomas E. (D)	✓	
Brown, Steve (D)	✓	
Van Valkenburg, Fred (D)	✓	
Healy, John E. (Jack) (D)	✓	

Each Day Attach to Minutes.

7 March 1979

TO: Senator Everett R. Lensink
Chairman, Senate Judiciary

FROM: Rev. Bill Burkhardt

RE: HB 618

I want to express for the record my opposition to HB 618 which you have before your committee.

There are many good reasons for opposing this legislation:

1. It destroys motivation for rehabilitation and promotes desperation climate in prisons.
2. Costly to the state. A rehabilitated prisoner is back paying taxes before this sentence could run its course.

I am told by some that the cost of a year in Deer Lodge is now running in excess \$15,000 per prisoner. On economic grounds alone it seems a poor measure.

3. Undercuts the validity of three branches of government in which we trust the Judiciary in the form of our judges to make discretionary decisions about individual crimes.

4. Does not take into account a one-time crime of passion with genuine remorse and desire to make amends and return to society in a productive way.

I hope your committee will kill this bill. Thank you very much.

William A. Burkhardt

SENATE COMMITTEE JUDICIARY

Date 3/7/79 H.M.S.O. Bill No. 4861E Time 10:48

NAME	YES	NO
Lensink, Everett R., Chr. (R)		✓
Olson, S. A., V. Chr. (R)	✓	
Turnage, Jean A. (R)	✓	
O'Hara, Jesse A. (R)	✓	
Anderson, Mike (R)		✓
Galt, Jack E. (R)	✓	
Towe, Thomas E. (D)		
Brown, Steve (D)		✓
Van Valkenburg, Fred (D)		✓
Healy, John E. (Jack) (D)		✓
	4	5

Alvin Brown
Secretary

Everett R. Lensink 4/6
Chairman

Motion: Be considered

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date 3/9/79 House Bill No. 618 Time 10:49

NAME	YES	NO
Lensink, Everett R., Chr. (R)	✓	
Olson, S. A., V. Chr. (R)		✓
Turnage, Jean A. (R)		✓
O'Hara, Jesse A. (R)		✓
Anderson, Mike (R)	✓	
Galt, Jack E. (R)		✓
Towe, Thomas E. (D)	✓	
Brown, Steve (D)	✓	
Van Valkenburg, Fred (D)	✓	
Healy, John E. (Jack) (D)		
	5	4

Alice Conroy
Secretary

Everett R. Lensink, etc
Chairman

Motion: Be not considered in.

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

.....March 7,..... 19 79.

MR.President:.....

We, your committee onJudiciary.....

having had under considerationHouse..... Bill No. 519

Respectfully report as follows: That.....House..... Bill No. 519

BE NOT CONCURRED IN

~~DQ-PASS~~

HOUSE BILL NO. 618

INTRODUCED BY KEEDY, RAMIREZ, SIVERTSEN, CONROY, KROPP,
MARKS, MOORE, SEIFERT, IVERSON, DASSINGER, MANUEL,
DOZIER, JOHNSTON, KEYSER, ANDERSON, JENSEN, ROTH,
WYRICK, NATHE, ERNST, SCHULTZ, SPILKER, MURWITZ, UNDERDAL,
ELLISON, VINGER, FEDA, HEMSTAD, MEYER, GOULD, PISTORIA,
DAY, CURTISS, BURNETT, PORTER, DONALDSON, HAYNE,
C. SMITH, KVAALEN, FABREGA, PAVLOVICH, TEAGUE, O'CONNELL

A BILL FOR AN ACT ENTITLED: "AN ACT TO RAISE THE MANDATORY
MINIMUM SENTENCE FOR DELIBERATE HOMICIDE FROM 2 YEARS TO 10
YEARS; ESTABLISHING A MANDATORY MINIMUM SENTENCE OF 2 YEARS
FOR NEGLIGENT HOMICIDE AND FOR AIDING OR SOLICITING SUICIDE;
RESTRICTING DEFERMENT OR SUSPENSION OF THE MANDATORY MINIMUM
SENTENCES ESTABLISHED IN THIS ACT; AMENDING SECTIONS
45-5-102, 45-5-104, 45-5-105, 46-18-201, AND 46-18-222,
MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-102, MCA, is amended to read:

"45-5-102. Deliberate homicide. (1) Except as provided
in 45-5-103(1), criminal homicide constitutes deliberate
homicide if:

- (a) it is committed purposely or knowingly; or
- (b) it is committed while the offender is engaged in

or is an accomplice in the commission of, an attempt to
commit, or flight after committing or attempting to commit
robbery, sexual intercourse without consent, arson,
burglary, kidnapping, felonious escape, or any other felony
which involves the use or threat of physical force or
violence against any individual.

(2) A person convicted of the offense of deliberate
homicide shall be punished by death or life imprisonment as
provided in 46-18-301 through 46-18-310 or by imprisonment
in the state prison for a term of not less than 2 10 years
or more than 100 years, except as provided in 46-18-222."

Section 2. Section 45-5-104, MCA, is amended to read:
"45-5-104. Negligent homicide. (1) Criminal homicide
constitutes negligent homicide when it is committed
negligently.

(2) A person convicted of negligent homicide shall be
imprisoned in the state prison for any term not to exceed a
term of not less than 2 years or more than 10 years, except
as provided in 46-18-222."

Section 3. Section 45-5-105, MCA, is amended to read:
"45-5-105. Aiding or soliciting suicide. (1) A person
who purposely aids or solicits another to commit suicide
but such suicide does not occur, commits the offense of
aiding or soliciting suicide.

(2) A person convicted of the offense of aiding or

1 ~~soliciting-a-suicide-shall-be-imprisoned-in-the-state-prison~~
 2 ~~for--any--term-not-to-exceed-a-term-of-not-less-than-2-years~~
 3 ~~or-more-than-10-years-except-as-provided-in-46-18-222.~~"

4 Section 2. Section 46-18-201, MCA, is amended to read:
 5 "46-18-201. Sentences that may be imposed. (1)
 6 Whenever a person has been found guilty of an offense upon a
 7 verdict or a plea of guilty, the court may:

8 (a) defer imposition of sentence, excepting sentences
 9 for driving under the influence of alcohol or drugs, for a
 10 period not exceeding 1 year for any misdemeanor or for a
 11 period not exceeding 3 years for any felony. The sentencing
 12 judge may impose upon the defendant any reasonable
 13 restrictions or conditions during the period of the deferred
 14 imposition. Such reasonable restrictions or conditions may
 15 include:

- 16 (i) jail base release;
- 17 (ii) jail time not exceeding 90 days;
- 18 (iii) conditions for probation;
- 19 (iv) restitution;
- 20 (v) any other reasonable conditions considered
- 21 necessary for rehabilitation or for the protection of
- 22 society; or
- 23 (vi) any combination of the above.
- 24 (b) suspend execution of sentence up to the maximum
- 25 sentence allowed for the particular offense. The sentencing

1 judge may impose on the defendant any reasonable
 2 restrictions during the period of suspended sentence. Such
 3 reasonable restrictions may include:

- 4 (i) jail base release;
- 5 (ii) jail time not exceeding 90 days;
- 6 (iii) conditions for probation;
- 7 (iv) restitution;
- 8 (v) any other reasonable conditions considered
- 9 necessary for rehabilitation or for the protection of
- 10 society;
- 11 (vi) any combination of the above.
- 12 (c) impose a fine as provided by law for the offense;
- 13 (d) commit the defendant to a correctional institution
- 14 with or without a fine as provided by law for the offense;
- 15 (e) impose any combination of subsections (1)(b),
- 16 (1)(c), and (1)(d).

17 (2) If any restrictions or conditions imposed under
 18 subsection (1)(a) or (1)(b) are violated, any elapsed time,
 19 except jail time, shall not be a credit against the sentence
 20 unless the court orders otherwise.

21 (3) Except as provided in 46-18-222, the imposition or
 22 execution of the first 2 years of a sentence of imprisonment
 23 imposed under the following sections may not be deferred or
 24 suspended: 45-5-102(2), 45-5-103(2), ~~45-5-104(2)~~
 25 ~~45-5-105(2)~~ 45-5-202(2), 45-5-302(2), 45-5-303(2),

45-5-401(2), 45-5-503(2) and (3), 45-9-101(2), 45-9-102(3),
and 45-9-103(2).

~~(4) Except as provided in 46-18-222, the imposition or
execution of the first 10 years of a sentence of
imprisonment imposed under 45-5-102(2) may not be deferred
or suspended."~~

Section 3. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences
and restrictions on deferred imposition and suspended
execution of sentence. All mandatory minimum sentences
prescribed by the laws of this state and the restrictions on
deferred imposition and suspended execution of sentence
prescribed by subsections (3) and (4) of 46-18-201(3),
46-18-221(3), and 46-18-502(2) do not apply if:

(1) the defendant was less than 18 years of age at the
time of the commission of the offense for which he is to be
sentenced;

(2) the defendant's mental capacity, at the time of
the commission of the offense for which he is to be
sentenced, was significantly impaired, although not so
impaired as to constitute a defense to the prosecution;

(3) the defendant, at the time of the commission of
the offense for which he is to be sentenced, was acting
under unusual and substantial duress, although not such
duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct
constituting the offense was principally the conduct of
another, and the defendant's participation was relatively
minor; or

(5) where applicable, no serious bodily injury was
inflicted on the victim."

Section 4. Saving clause. This act applies only to
offenses committed after the effective date of this act.

-End-